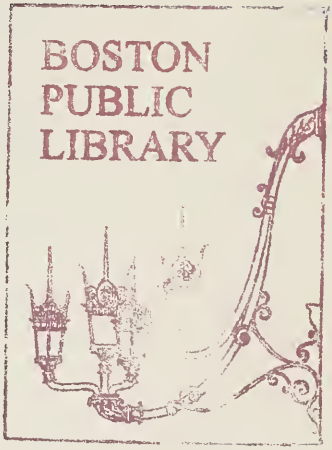
BOSTON PUBLIC LIBRARY
3 9999 06583 034 9
GOVDOC
BRA
2885

MEMORANDUM IN FURTHER SUPPORT OF APPLICANTS' PROPOSED FIRST AMENDMENT TO THE CHAPTER 121A APPLICATION FOR THE POST OFFICE SQUARE REDEVELOPMENT PROJECT



Daniel O. Mahoney
James B. White
John E. Rattigan, Jr.
PALMER & DODGE
One Beacon Street
Boston, Massachusetts 02108
(617) 227-4400

February 11, 1986

GOVDOC
BRA
2885

MEMORANDUM IN FURTHER SUPPORT OF APPLICANTS' PROPOSED FIRST AMENDMENT TO THE CHAPTER 121A APPLICATION FOR THE POST OFFICE SQUARE REDEVELOPMENT PROJECT

Daniel O. Mahoney
James B. White
John E. Rattigan, Jr.
PALMER & DODGE
One Beacon Street
Boston, Massachusetts 02108
(617) 227-4400

February 11, 1986

CONTENTS

		Page
I.	Introduction	1
II.	The Amendment Does Not Propose a Fundamental Change to the Project	2
	a. Design	2
	b. Substitute Parking	3
	c. Financing	3
	d. Section 6A Contract	4
	e. Lease to the Partnership	4
	f. Attorney General's Opinion	4
	g. Filing Fee	5
III.	First Franklin's So-Called Motion to Dismiss Should Be Denied	6
IV.	First Franklin's So-Called Motion to Stay Should Be Denied	7
V.	First Franklin's So-Called Motion to Amend Report and Decision Should Be Denied	8
VI.	Conclusion	10

I. INTRODUCTION

We represent Friends of Post Office Square, Inc. in connection with the proposed Post Office Square Redevelopment Project (the "Project"), as described in an application (the "Application") filed by subsidiaries of Friends of Post Office Square, Inc. (the "Applicants") pursuant to Mass. G.L. c. 121A and St. 1960, c. 652, as amended, ("Chapter 121A") for approval of a Project and for consent to the formation of Post Office Square Redevelopment Corporation (the "Corporation"). The Application was approved by the Authority pursuant to a Report and Decision (the "Report and Decision") dated May 10, 1984, and the Authority's approval was approved by the Mayor on October 4, 1984. The Applicants have submitted to the Authority a First Amendment to the Application, dated December 23, 1985 (the "Amendment"). This memorandum has been prepared in response to materials filed with the Authority by counsel for First Franklin Parking Corp. ("First Franklin"), including three so-called motions and a "Memorandum and Submission of Substantive Evidence."

The issue before the Authority is the Amendment. It requests: (i) the Authority's approval of a Development Agreement (the "Development Agreement") and a revised Section 6A Contract (the "Section 6A Contract"), and (ii) the deletion of the requirement in the Report and Decision for an opinion of the Commissioner of Revenue concerning the Section 10 excise. The Development Agreement and the Section 6A

Digitized by the Internet Archive
in 2010 with funding from
Boston Public Library

http://www.archive.org/details/memoranduminfurt00bost

Contract have been prepared to address certain concerns raised by the Mayor. The opinion on the Section 10 excise has been given, but by the Attorney General rather than the Commissioner of Revenue.

II. THE AMENDMENT DOES NOT PROPOSE A FUNDAMENTAL CHANGE TO THE PROJECT.

If the Authority finds that a proposed amendment involves a "fundamental change" to the Project, it must proceed as if the amendment were a new application. St. 1960, c. 652, §13 (paragraph 12); Authority's Rules and Regulations, Rule 6. A "fundamental change" has been defined as a change which could "fundamentally alter the essence of the project." Bronstein v. Prudential Insurance Company of America, 390 Mass. 701, 710 (1984); Boston Edison Co. v. Boston Redevelopment Authority, 376 Mass. 151, 154 (1978).

The essence of the Project is a six-level, 1400-car underground parking garage and surface level park, with the net profits generated by the Project to be used for the public good. As will be shown below, nothing in the Amendment alters those essential elements.

a. Design.

In the Report and Decision, the Authority approved the essential elements of the Project, and reserved the right to review the final Project design. Article II of the Development Agreement outlines a detailed design process,

which allows the Authority and members of the public to have greater input with respect to the specific design than they would have in the usual project. The design process will address such questions as the exact location of elevator shafts, air vents, and trees, but it will not change the essential design elements of the Project approved by the Authority. The details of the design remain subject to the approval of the Authority.

b. Substitute Parking.

Section 3(a) of the Application provides as follows: "During construction, the Applicants will make efforts to make substitute parking available at a reasonably practicable and convenient location". Article III of the Development Agreement provides details of the efforts that the Applicants are expected to undertake, and broadens the existing requirement by recognizing that there may be additional solutions to dealing with displaced parkers beyond simply making efforts to relocate them to satellite parking lots. Those provisions do not change the Project.

c. Financing.

The Application outlines, and the Report and Decision approves, the basic financial structure of the Project. The Amendment does not request any change in that structure. The Development Agreement supplements the financial structure by giving the City additional control over the implementation of the Project financing and over the revenues generated by and

distributed from the Project. The Authority will continue to have the right to approve the financing plan for the Project.

d. Section 6A Contract.

At the request of the Mayor and the Commissioner of Assessing, the Applicants have agreed to make certain changes to the proposed Section 6A Contract submitted to the Authority with the Application. Application, Appendix 6. The revised contract deletes the requirement that the Assessors determine a maximum fair cash value for the Project, modifies the allocation of Section 6A revenues between the City's general fund and the Park Trust (to allocate a greater portion to the general fund), and provides for possible additional payments to the City at the time of construction financing.

e. Lease to the Partnership.

The Amendment requests one change to the proposed ground lease. Requested by the Mayor and the Commissioner of Assessing, this change increases the rent that the Partnership pays to the Corporation, and thereby increases the monies paid by the Corporation to the City under the Section 6A Contract. The final ground lease remains subject to the approval of the Authority, as required by the Report and Decision. This proposed Amendment reinforces, rather than changes, the essential elements of the Project.

f. Attorney General's Opinion.

The Amendment requests that the Authority delete from the Report and Decision the requirement of an opinion from

the Department of Revenue supporting the method proposed by the Applicants for computing the excise required by Chapter 121A, Section 10. The Commissioner of Assessing requested that opinion from the Department of Revenue. In turn, the Commissioner of Revenue referred the request to the Attorney General. After reviewing materials submitted by First Franklin and the Applicants, the Attorney General issued an opinion on November 6, 1985, upholding the method proposed by the Applicants and approved by the Authority. (A copy of that opinion was attached to the Amendment as Exhibit C.) Under G.L. c. 58, §1A, the Attorney General's opinion is binding on the Department of Revenue and the Commissioner of Assessing. Thus, the requirement of the Report and Decision has been satisfied, and should be deleted.

g. Filing Fee.

Since the Amendment does not constitute a fundamental change to the Project, the Authority was not required to hold a public hearing on the Amendment. St. 1960, c. 652, §13. However, in order to assure that interested persons such as First Franklin would have an opportunity to be heard on the Amendment, the Applicants requested that the Authority hold a public hearing, and submitted with the Amendment the required filing fee of $3500. The Applicants' action was taken solely to ensure a public forum, and should not be seen as an admission by the Applicants that the Amendment constitutes a fundamental change.

III. FIRST FRANKLIN'S SO-CALLED MOTION TO DISMISS SHOULD BE DENIED.

First Franklin has asked the Authority to reject the Amendment on the grounds that it does not technically comply with the Authority's Rules and Regulations. Outright rejection of an amendment on the basis of a technical deficiency does not serve the Authority's purposes, since an applicant may simply file a new application in proper form. Rather, the Authority should determine whether the deficiency is material, and, if it is not, the Authority should waive the deficiency, as permitted by Rule 1.B. of the Authority's Rules and Regulations. The right of the Authority to waive its rules and regulations was recognized in Boston Edison Co. v. Boston Redevelopment Authority, 376 Mass. 151, 154-155 (1978).

In the present case, the Amendment was signed by the Applicants' attorney, not by the Applicants, and it did not specify that it was signed under oath. There should be no doubt that the attorney signing the Amendment was authorized to do so. At the time scheduled for the Public Hearing, a majority of the Board of Directors of the Applicants was present at the Authority board room (Transcript, page 11). Several of the directors, including the chairman of the board and the president, remained throughout the hearing. Further, to dispel any doubt about the materiality of the purported non-compliance with the Rules and Regulations, there is

attached hereto as Exhibit 1, a First Amendment in precisely the form filed previously with the Authority, except that it has been signed by the Applicants under oath.

The Applicants request that the Authority find that the purported non-compliance with its Rules and Regulations is immaterial, and that the Authority waive the same.

IV. FIRST FRANKLIN'S SO-CALLED MOTION TO STAY SHOULD BE DENIED.

The Applicants and the Authority have complied in all respects with the requirements of the Massachusetts Environmental Policy Act ("MEPA"), G.L. c. 30, §§61-62H. In July 1983, the Applicants submitted a detailed Environmental Notification Form ("ENF") to the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts ("EOEA"). In August 1983, EOEA held a hearing on the ENF to afford opponents of the Project, such as First Franklin, an opportunity to be heard on the environmental consequences of the Project. On September 6, 1983, James S. Hoyte, Secretary of EOEA, issued a Certificate on the ENF, in which he determined that the Project does not require the preparation of an Environmental Impact Report. (Copies of the ENF and the Certificate were included with the Application as Exhibit 11.) In addition, the Authority made extensive environmental findings in Section I of the Report and Decision.

First Franklin's motion to stay is simply an attempt to challenge Secretary Hoyte's finding that no Environmental Impact Report is required. The Authority is not the proper forum for challenging such a finding. The procedure for such a challenge is specified in G.L. c. 30, §62H, which requires that any person intending to bring an action challenging the Secretary's determination of whether an environmental impact report is required, must first file a notice of intention to commence such an action within sixty days of the Secretary's determination. The Applicants believe that First Franklin failed to file such notice, and is attempting to circumvent the statute's requirements by asking the Authority to review the Secretary's finding.

First Franklin also alleges that the Applicants are now required to contact the Secretary of EOEA, because the Project has changed. See 310 C.M.R. 10.16. For the reasons discussed above, the Applicants believe that the Amendment does not constitute a change to the Project, and that there will be no environmental consequences of the Authority's approval of the Amendment.

V. FIRST FRANKLIN'S SO-CALLED MOTION TO AMEND REPORT AND DECISION SHOULD BE DENIED.

First Franklin's so-called motion to amend Report and Decision is nothing more than a request that the Authority reconsider its original approvals of the Project. The

motion, and the reports submitted as Exhibits IV-B through IV-F to its memorandum (tabs 12 through 16), have no relevance to the Amendment presently before the Authority.

In support of its argument that the factual findings of the Authority with respect to the Project should be reconsidered, First Franklin cites Boston Edison Co. v. Boston Redevelopment Authority, 374 Mass. 37 (1977). First Franklin's reliance on that case is misplaced. In Edison, the court held that when the Authority makes a finding that a particular project site is decadent, it may consider its prior finding that the entire neighborhood around the site (the Fenway Urban Renewal Area) was decadent, but must also consider current, site-specified evidence. Id. at 60. In our case, as in Edison, the Authority considered current, site-specific evidence before finding that the project site was decadent. That finding was made in the Report and Decision, and is not affected by the Amendment presently before the Authority.

In addition to being untimely and irrelevant, the reports submitted by First Franklin are misleading and inaccurate. As the engineering letter from LeMessurier Consultants (dated February 10, 1986 and attached hereto as Exhibit 2) indicates, serious structural deficiencies in the garage noted in 1984 remain uncorrected.

VII. CONCLUSION.

In conclusion, the Applicants request that the Authority approve the Amendment and determine that:

a. The Amendment does not propose a fundamental change to the Project;

b. The purported non-compliance of the Amendment with the Authority's Rules and Regulations is immaterial, and should be waived; and

c. First Franklin's so-called motion to dismiss, motion to stay, and motion to amend report and decision are each denied;

FIRST AMENDMENT TO APPLICATION FOR APPROVAL TO CARRY OUT A PROJECT IN BOSTON, MASSACHUSETTS UNDER MASS. G.L. c. 121A, AS AMENDED, AND STAT. 1960, c. 652, AND FOR CONSENT TO THE FORMATION OF POST OFFICE SQUARE REDEVELOPMENT CORPORATION

The undersigned (the "Applicants") hereby amend their Application (the "Application") dated November 14, 1983 to the Boston Redevelopment Authority (the "Authority") pursuant to the provisions of Mass. G.L. c. 121A, as amended, ("Chapter 121A") the provisions of Stat. 1960, c. 652 and the rules and regulations of the Authority, as provided below. The subject of the application is the Post Office Square Redevelopment Project (the "Project"), which was approved by the Authority in its report and decision (the "Report and Decision") on the Application, dated May 10, 1984.

1) The Applicants hereby request that the Authority determine that the Development Agreement attached hereto as Exhibit A (the "Development Agreement") is consistent with and in furtherance of the Report and Decision, and that the Report and Decision be amended to provide that:

(a) the design review process outlined in Article II (Design) of the Development Agreement constitutes compliance by the Applicants of their obligation pursuant to Section 3(a) of the Application, and such design review process shall be the sole mechanism for design review of the Project;

(b) the urban redevelopment corporation's obligations under Article III (Temporary Transportation Management Program) of the Development Agreement shall be in lieu of the Applicants' obligation to provide substitute parking pursuant to Section 3(a) of the Application, and such requirement of substitute parking shall be deleted from the Report and Decision; and

(c) the provisions of Article IV (Project Financing) of the Development Agreement, concerning the rights of the City and Authority to approve the financing for the Project, supersedes paragraph 1 of the Minimum Standards for Financing, Construction and Maintenance and Management of the Project attached to the Application as Exhibit 18 and referenced in the Report and Decision, and said paragraph 1 shall be deleted.

2) The Applicants request that the Authority approve the execution by the Corporation of a Contract authorized under Section 6A of Chapter 121A, in substantially the form attached hereto as Exhibit B, and that the Authority determine that such Contract conforms to the requirement for

such a contract contained in the last paragraph of Section E of the Report and Decision.

3) The Applicants hereby request that the Authority approve the following amendment to Appendix 17 of the Application (Summary of Basic Provisions of the Ground Lease Between the Corporation and the Partnership), and that the Authority amend page 6 of the Report and Decision to refer to Appendix 17, as amended as follows:

a) The "TERM" is amended to read as follows: The Term of the lease shall be as determined pursuant to the Development Agreement for the Project between the Corporation, the Authority and the City of Boston.

b) The "RENT" provision is amended by deleting the definition of "Applicable Percentage" and substituting the following in its place:

"Applicable Percentage" shall mean, the following percentages during the following periods:

(i) Prior to the date on which the garage portion of the Project is placed in operation, the Applicable Percentage shall be zero;

(ii) During the first year after the garage is placed in operation (and for the portion, if any, of the year in which the garage is placed in operation), and thereafter, the Applicable Percentage shall be one hundred percent (100%).

4) Subsequent to the Report and Decision, the Commissioner of Assessing of the City of Boston, by letter dated April 30, 1985, requested the opinion of Ira A. Jackson, Commissioner of the Massachusetts Department of Revenue, as to the proper calculation of the excise payable with respect to the Project pursuant to Section 10 of Chapter 121A . The Commissioner of Revenue referred the Request for Opinion to the Attorney General of the Commonwealth, and on November 6, 1985, the Attorney General rendered his opinion, which upheld the computation of the Section 10 excise as proposed in the Application. A copy of the Attorney General's Opinion is attached as Exhibit C. In view of such opinion, the Applicants request that the Authority amend the second sentence of the fifth paragraph of Section E of the Report

and Decision by deleting the words: "Subject to receipt by the Authority of approval in writing by the Department of Revenue, Commonwealth of Massachusetts...".

EXECUTED as of the twenty-third day of December, 1985.

PROGRAMS FOR PARKING, INC.

By: _____
Robert M. Weinberg
President

PARKING IMPROVEMENTS, INC.

By: _____
Robert M. Weinberg
President

BETTER TRAFFIC, INC.

By: _____
Robert M. Weinberg
President

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

February 10, 1986

Then personally appeared the above named Robert M. Weinberg, to me known and known by me to be the President of PROGRAMS FOR PARKING, INC., PARKING IMPROVEMENTS, INC., and BETTER TRAFFIC, INC., and, being duly sworn, acknowledged the foregoing instrument to be the free act and deed of such corporations, and made oath that, to the best of his knowledge and belief, the statements contained in the foregoing First Amendment are true. Before me,

_____
Notary Public
My commission expires:

JOHN E. RATTIGAN, JR., Notary Public
My Commission Expires Jan. 5, 1990

EXHIBIT 2

LeMessurier Consultants
1033 Massachusetts Avenue, Cambridge, MA 02238
617 868-1200 Telex: 710-320-7699 SCI CAM

10 February 1986

Mr. John E. Rattigan, Jr.
Palmer and Dodge
One Beacon Street
Boston, Massachusetts 02108

Reference: Post Office Square Garage
Unit No. 3 Parking Garage
LeM File No. 86024

Dear Mr. Rattigan:

I have reviewed the section of the memorandum, Part IV, Section in Support of Motion to Amend Report, which deals with the present structural condition of the garage, which was submitted to the Boston Redevelopment Authority by the attorneys for the First Franklin Parking Corporation. My conclusion, details of which are stated below, is that the major structural deficiencies noted in the Simpson, Gumpertz & Heger report of March, 1984, remain uncorrected. This conclusion is also reached by the February 3, 1986 report of Technical Analysts Inc. (hereinafter TA Inc.), engineers for First Franklin Parking Corporation, which states that, even though some maintenance has occurred in the past two years, "no rehabilitation of the first and second floor slab has been undertaken". Such rehabilitation is necessary to arrest continuing deterioration of the garage and to assure its safety.

The materials reviewed by me are:

1) Affidavits by Mr. Milone and Mr. Lally concerning recent repairs to the garage and the costs associated with such repairs.

2) A report by Technical Analysts Inc. on the present structural condition of the garage.

3) Report of load tests conducted by the structural engineers, Chapin Associates Inc. including Appendix No. 1, slab deflections, by Boston Survey Consultants.

4) Part IV, Section in Support of Motion to Amend Report.

Based on the review of these materials, I have the following comments:

Repairs to the Garage: A review of the maintenance expenses does not indicate how much money was spent on the structural repairs to the garage. Certain sums of money have been spent on items such as electricity, supplies, scaffolding, painting, security, engineering, maintenance staff, etc., which does not help improve the structural condition and safety of the garage. The amount spent on this type of work totals $251,547.10. The amount spent in construction comes to $253,023.96, and within this amount, some sums might have been spent for electrical, landscaping, facade repointing and associated repairs, labor for window replacements, supervision, etc. Therefore, the amount of money spent on meaningful structural repairs appears to be minimal.

A brief review of the expenses show that various small sums of money were spent in stages. Therefore, no comprehensive program for the repair work was followed. It is necessary, before undertaking structural repair work (other than safety-related work such as chipping concrete, patching potholes, cutting of protruding reinforcement, etc.) of this type, to have a competent structural engineer survey the entire building, document defective, deteriorated areas of concrete and reinforcement and make detailed recommendations of repair work. Proper drawings and/or specifications and full time supervision with the help of an independent testing laboratory should also be provided. In the absence of these procedures all repair work is not structurally meaningful. Apparently a repair procedure was provided by TA Inc. in their report of 17 January 1984 and resubmitted for compliance again in their letter of 3 February 1986. By its own statements in its report on February 3, 1986, TA Inc. acknowledges that this procedure was not followed.

Report by TA Inc., dated 3 February 1986: It is clear from this report that not much structural repair work has been accomplished in the last two years. Referring to the second paragraph of the report dated 3 February 1986, I quote, "In general, this report confirmed our findings as to the condition indicating that there was deterioration of the first and second floor slabs as well as facade deterioration." The report they refer to was written by Simpson, Gumpertz &

Heger Inc. in March of 1984. Furthermore, on page 3 of their report (3 February 1986) they indicate that their earlier recommendations for structural repair work have not been accomplished and recommended again that this repair work be done. Therefore, not much structural repair work has been performed since that time.

Further, the TA Inc. report indicates that the following deficiencies noted by Simpson, Gumpertz & Heger Inc., in March, 1984, still exist: deterioration around column bases causing some reduction in strength, the anchors on the exterior panels remain corroded, local sections of ramps show cracks. It is not clear that spalling and reinforcement corrosion and major deterioration of the parapets at roof level have been corrected.

Page 2 of the TA Inc. report lists nine items on which repair work was performed since the Simpson, Gumpertz & Heger report of March 1984. None of the repair work performed to date really addresses the issue of slab deterioration, i.e., removing and replacing deteriorated and defective concrete and reinforcement at the first and second floors. Particular attention must be paid to item 8 of the repair work performed which states, "Additional bituminous patching has been done on the first and second floor slabs to replace deteriorated concrete." This is particularly dangerous in that it hides the problem and prevents the detection of further deterioration of the floor surfaces that could cause safety problems. As noted above, the TA Inc. report further states on page 2 that no rehabilitation of the first and second floor slabs has been undertaken. They also conducted a load test at the second floor level and suggest that there is no immediate concern over the structural adequacy of the floor slabs. Our comments on the load test follow this section.

Report of the load test by TA Inc. in association with Chapin Associates: The load test does not apply the loads which meet the requirements of the Massachusetts State Building Code, 4th edition now in effect. The code specifies twice the live load, which is equivalent to 100 pounds per square foot. The applied load was 92 pounds per square foot over an area of 65x55 feet, which is only 91 percent of the area of the four full bays (68x58 feet). The failure to apply the correct load over the full area or the four bays results in a combined reduction of 16 percent from the required code criteria. The load test report does not

indicate how long the load was left in place nor does it indicate the recovery of deflection after the load was removed. The Massachusetts State Building Code requires a 24 hour period and recovery of at least 75 percent of deflection after unloading.

Results of load tests are only meaningful at the time they are done and for a short period of time thereafter depending on the rate of deterioration of the structure. Thus, because of the deteriorated condition of the slabs, load test results obtained for First Franklin Parking Corporation do not mean that the existing carrying capacity of the structure will continue. Unless extensive repair work is undertaken, the present condition of the Post Office Square Garage will continue to deteriorate, hastened by the addition of salts and water brought by automobiles. This could continually weaken the capacity of the structure to carry safely the loads imposed on the structure.

Part IV, Section in Support of Motion to Amend Report: This section states (on page IV-7) that all the issues regarding Mr. William LeMessurier's observations made in January, 1984 concerning the deterioration of the garage have been remedied. I made a brief walk-through inspection with Mr. William LeMessurier on 22 January 1986 and he showed me areas of deterioration on the basement and first floor ceiling which he had noticed in his previous inspection of the garage on 17 January 1984. Therefore, the statement that almost all of the defects observed by Mr. William LeMessurier have been remedied appears to be inaccurate. I have included herewith my notes of this walk-through of the Post Office Square Garage with Mr. William J. LeMessurier on 22 January 1986. A more detailed inspection was not possible since Mr. LeMessurier and I were told by garage employees to leave the building.

Very truly yours,
LeMESSURIER CONSULTANTS

M. V. Ravindra

Mysore V. Ravindra, P.E.

Enclosure

Notes of Walk-through of Post Office Square Garage on 22 January 1986 by W.J. LeMessurier and M.V. Ravindra.

Before visiting the garage I reviewed the notes prepared by W.L. Thoen when he visited the garage on 17 January 1984 with W.J. LeMessurier. I made a quick tour of the basement and first level of the garage and made the following observations:

Exterior:

It appears that most of the items mentioned in W.L. Thoen's report still needed attention. The following items were immediately noticeable.

- Veneer needs caulking.
- Rusted connection visible from Franklin Street at open joints.
- Corners of veneer big open joints on Franklin Street.
- Reinforcing steel visible at canopy.
- Some broken glass on Pearl Street.
- Slab on grade settled on Franklin Street side.

Interior:

- Rusted reinforcement at ramp overhead first floor.
- Large areas of rusted reinforcing at ramp in basement on Pearl Street side.
- Also large areas of reinforcing visible next to ramp at basement.
- In number of areas spalled, deteriorated concrete can be seen.
- Many areas have been patched with asphalt making it difficult to observe the true condition of the concrete and reinforcement.
- Number of places in the garage rusted reinforcement and spalled concrete is visible.

General: Some recent work appears to have been performed.

- Chipping of loose concrete.
- Some asphalt fill in driving lanes.
- Yellow paint on columns and at base of columns.

Not much structural repair work has been performed since January 1984 as there are a number of areas showing spalled or deteriorated concrete and rusted reinforcing visible.